

Sales of prescription drugs are not exempt from sales tax under the Medicare Part D Plan because these are not sales to the government. However, the Prescription Drug Provider ("PDP") rather than the insured is responsible for the tax. (This is a GIL.)

July 13, 2006

Dear Xxxxx:

This letter is in response to your letter dated March 24, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting a Private Letter Ruling concerning the recently enacted Medicare Part D Prescription Plan and its effect upon ABC, which conducts business in ninety-nine retail supermarkets located in Illinois. Ninety-one of these locations have a pharmacy that dispenses prescription drugs. We are inquiring about the Service Occupation Tax (SOT) that is remitted to the State of Illinois Department of Revenue each month.

This is our current understanding of the SOT calculation:

The sale of prescription drugs by a pharmacist when the cost of the drugs is less than 75% of its sales price is subject to the state and local SOT. The pharmacist is considered a de minimis serviceman. The tax is based on the cost of the drugs sold and applying the low tax rate in effect at the location of the sale. It is paid by a registered de minimus, such as ABC.

When a prescription drug sale is made and paid for by the federal or state government, such as Medicare or Medicaid, no SOT is due on that portion paid by the federal or state government.

We have not seen any publication from the Illinois Department of Revenue that provides information regarding the Medicare Part D Prescription Plan and the Service Occupation Tax.

- **Are prescriptions sold under this plan to be treated differently from those sold under the traditional Medicare plan, specifically in regard to tax issues?**
- **Does Illinois impose a different tax liability on these prescriptions?**

ABC operates under IBT #. XYZ is the parent company of ABC.

The tax period at issue is January 2006 forward. There is a no tax audit being conducted by the Illinois Department of Revenue at this time.

There are no contracts, agreements, instruments or other documents relevant to this request.

To the best of our knowledge the department has not ruled upon on these issues and we have not submitted these issues before.

There are no trade secrets to delete from the publicly disseminated version of this letter.

DEPARTMENT'S RESPONSE

Under the traditional Medicare and Medicaid plan, sales made to Medicare and Medicaid are exempt from Retailers' Occupation Tax as sales to a government body. No tax is due on the portion of the payment made by Medicare or Medicaid. However, Retailers' Occupation Tax is due on any portion of the bill paid by the beneficiaries or a private insurance company. In other words, when Medicare pays 80% of the medical bill and the remaining 20% is billed to the patient or his insurance company, the 20% will be subject to sales tax. The 80% payment is a governmental payment and is not subject to the tax.

The Medicare Part D Prescription Plan is organized differently. The government provides funds on a per capita basis to the Prescription Drug Providers ("PDPs"). The PDPs operate as private insurance companies under contract with the government. They, not the government, are responsible for purchasing drugs for their beneficiaries. The beneficiaries usually pay a co-pay. Since sales are made to the PDPs and not directly to the government, the drug sales do not qualify for the government tax exemption. Therefore sales of drugs are not exempt from tax under the Medicare D Plan. Please note that according to the U.S. Department of Health and Human Services, sales tax cannot be added to a beneficiary's co-payment under the Plan. As a result, sales tax is due on drugs sold under the Medicare Part D Plan, but it may not be charged to the beneficiary. As between the beneficiary and the PDP, any sales tax due is the responsibility of the PDP. For example, a qualifying senior covered under the Medicare Part D Plan with a \$10 co-pay may not be charged tax on that co-pay. Please see the Department's memo, enclosed.

Please note that servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.109. However, servicemen

no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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